



## **DEPARTMENT OF AGRICULTURE**

### **7 CFR Part 800**

#### **Fees for Official Inspection and Official Weighing Services under the United States**

##### **Grain Standards Act (USGSA)**

**AGENCY:** Agricultural Marketing Service, GIPSA, USDA.

**ACTION:** Final rule.

**SUMMARY:** USDA, on behalf of the Agricultural Marketing Service (AMS) is announcing the fee schedule for official inspection and weighing services performed under the United States Grain Standards Act (USGSA), as amended, in order to comply with FGIS regulations and the Agriculture Reauthorizations Act of 2015, and publishing the annual review of Schedule A fees calculation and the resulting fees that went into effect on January 1, 2018.

**DATES:** Effective [Insert date of publication in the Federal Register].

**ADDRESSES:** Submit comments or notice of intent to submit comments by any of the following methods:

- *Postal Mail:* Please send your comment addressed to Kendra Kline, AMS, USDA, 1400 Independence Avenue, SW, Room 2043-S, Washington, DC 20250-3614.
- *Hand Delivery or Courier:* Kendra Kline, AMS, USDA, 1400 Independence Avenue, SW, Room 2043-S, Washington, DC 20250-3614.
- *Internet:* Go to <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Denise Ruggles, FGIS Executive

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**SUPPLEMENTARY INFORMATION:**

USGSA authorizes the Secretary of Agriculture to provide official grain inspection and weighing services and to charge and collect reasonable fees for performing these services. The fees collected are to cover, as nearly as practicable, costs for performing these services, including associated administrative and supervisory costs. The fees are in the regulations at 7 CFR 800.71.

On December 30, 2016, Grain Inspection, Packers and Stockyards Administration (GIPSA) published in the *Federal Register* (81 FR 96339) a final rule amending 7 CFR 800.71 in accordance with the Reauthorizations Act of 2015, which requires Federal Grain Inspection Service (FGIS) to conduct an annual review of the fees and operating reserve for the purposes of the annual adjustment of the fees.

**GIPSA / AMS Merger**

The Secretary delegated to the Under Secretary for Marketing and Regulatory Programs (MRP) authorities “related to grain inspection, packers and stockyards.” 7 CFR 2.22(a)(3)(i)-(vi). In 7 CFR 2.81, the Under Secretary for MRP further delegated these authorities to the Administrator of GIPSA. In a November 14, 2017 Secretary’s Memorandum, the Secretary directed that the authorities at 7 CFR 2.81 be re-delegated to the Administrator of AMS, and that the delegations to the Administrator of GIPSA be revoked. The delegations to the Under Secretary of MRP related to grain inspection, packers

and stockyards at 7 CFR 2.22(a)(3) remain unchanged. As part of the reorganization, GIPSA (and FGIS) were merged into AMS.

### **Exemption From Notice and Comment**

In publishing this final rule, we are dispensing with the usual notice of proposed rulemaking and public comment procedures contained in 5 U.S.C. 553. We have determined that, under 5 U.S.C. 553(b)(3)(B), good cause exists for dispensing with the notice of proposed rulemaking and public comment procedures for this rule. Specifically the rulemaking comports with and is consistent with the statutory adjustment of fees in section 7 of the USGSA (7 U.S.C. 79(j)) and the regulations at 7 CFR 800.71 with no issue of policy discretion. Accordingly, we have determined that opportunity for prior comment is unnecessary and contrary to the public interest, and we are issuing this revised regulation as a final rule that will apply to all national tonnage fees, local tonnage fees, and fees for service in 2018.

### **Fee Calculations**

The regulations require FGIS annually review the national tonnage fees, local tonnage fees, and fees for service. After calculating the tonnage fees according to the regulatory formula in section 800.71(b)(1), FGIS then reviews the amount of funds in the operating reserve at the end of the fiscal year (FY2017 in this case) to ensure that it has 4 ½ months of operating expenses as required by section 800.71(b)(2) of the regulations. If the operating reserve has more, or less than 4 ½ months of operating expenses, then FGIS must adjust all Schedule A fees. For each \$1,000,000, rounded down, that the operating reserve varies from the target of 4 ½ months, FGIS will adjust all Schedule A fees by 2 percent. If the operating

reserve exceeds the target, all Schedule A fees will be reduced. If the operating reserve does not meet target, all Schedule A fees will be increased. The maximum annual increase or decrease in fees is 5 percent (7 CFR 800.71(b)(2)(i)-(ii)).

(a) Tonnage fees for the 5-year rolling average tonnage were calculated on the previous 5 fiscal years 2013, 2014, 2015, 2016 and 2017. Tonnage fees consist of the national tonnage fee and local tonnage fee and are calculated and rounded to the nearest \$0.001 per metric ton. The tonnage fees are calculated as following:

(1) *National tonnage fee.* The national tonnage fee is the national program administrative costs for the previous fiscal year divided by the average yearly tons of export grain officially inspected and/or weighed by delegated States and designated agencies, excluding land carrier shipments to Canada and Mexico, and outbound grain officially inspected and/or weighed by FGIS during the previous 5 fiscal years.

$$\text{National Tonnage Fee} = \frac{\text{FY2017 National Administrative Costs}}{\text{5 Year Rolling Average Export Tons}}$$

Fiscal Year	Metric Tons
2013*	81,207,695
2014	117,560,767
2015	118,758,937
2016	122,330,979
2017	135,017,935
5-year Rolling Average	114,975,263

\* To provide uniformity in the 5-year Rolling Average calculation, fiscal year 2013 include tons of export grain officially inspected and/or weighed by delegated States and designated agencies prior to the implementation of the fee assessment in the *Federal Register* (78 FR 22151), effective May 1, 2013.

The national program administrative costs for fiscal year 2017 were \$6,906,527. The fiscal year 2018 national tonnage fee, prior to the operating reserve review, is calculated to be at \$0.060 per metric ton.

(2) *Local tonnage fee.* The local tonnage fee is the field office administrative costs for the previous fiscal year divided by the average yearly tons of outbound grain officially inspected and/or weighed by the field office during the previous 5 fiscal years.

$$\text{Local Tonnage} = \frac{\text{FY2017 Field Office Administrative Costs}}{\text{5 Year Rolling Average Export Tons (Local)}}$$

The field offices fiscal year tons for the previous 5 fiscal years and calculated 5-year rolling average are as follows:

Field Office	FY 2013	FY 2014	FY 2015	FY 2016	FY 2017	5-year Rolling Average
New Orleans	42,399,760	62,862,914	65,244,517	66,077,535	70,439,862	61,404,918
League City	10,418,686	12,623,510	12,474,343	12,581,236	13,307,780	12,281,111
Portland	3,953,500	6,065,934	4,111,533	4,645,754	5,175,459	4,790,436
Toledo	1,329,718	1,802,339	2,484,604	2,030,506	2,229,920	1,975,417

The local field office administrative costs for fiscal year 2017 and the fiscal year 2018 calculated local field office tonnage fee, prior to the operating reserve review, are as follows:

Field Office	FY 2017 Local Administrative Costs	Calculated FY 2018 Local Tonnage Fee
New Orleans	\$1,722,327	\$0.028
League City	\$800,539	\$0.065
Portland	\$409,115	\$0.085
Toledo	\$349,374	\$0.177

(3) *Operating reserve.* In order to maintain an operating reserve not less than 3 and not more than 6 months, FGIS reviewed the value of the operating reserve at the end of FY2017 to ensure that an operating reserve of 4 ½ months is maintained.

The program operating reserve at the end of fiscal year 2017 was \$23,546,619 with a monthly operating expense of \$3,340,024. The target of 4.5 months of operating reserve is \$15,030,108 therefore the operating reserve is greater than 4.5 times the monthly operating expenses by \$8,516,511. For each \$1,000,000, rounded down, above the target level, all Schedule A fees must be reduced by 2 percent. The operating reserve is \$8.5 million above the target level resulting in a calculated 16 percent reduction. As required by 800.71(b)(2)(ii), the reduction is limited to 5 percent. Therefore, FGIS is reducing all Schedule A fees for service in Schedule A in paragraph (a)(1) by the maximum 5 percent. All Schedule A fees for service are rounded to the nearest \$0.10, except for fees based on tonnage or hundredweight.

### **Executive Orders 12866 and 13563**

The Office of Management and Budget (OMB) has reviewed this regulatory action in accordance with the provisions of Executive Order 12866, Regulatory Planning and Review, and has determined that it does not meet the criteria for significant regulatory action. Additionally, because this rule does not meet the definition of a significant regulatory action, it does not trigger the requirements contained in Executive Order 13771. See OMB's Memorandum titled "Guidance Implementing Executive Order 13771, Titled "Reducing Regulation and Controlling Regulatory Costs"" (April 5, 2017).

### **Regulatory Flexibility Act**

Since grain export volume can vary significantly from year to year, estimating the total impact in any single year can be difficult. AMS recognizes, however, that the industry needs predictable inspection and weighing fees. The regulations at 7 CFR 800.71(b) set an annual cap of 5 percent for increases or decreases in inspection and weighing fees, and the increases and decreases are fixed according the statutory requirements of the Agriculture Reauthorization Act of 2015. This rulemaking is unlikely to have an annual effect of \$100 million or more or adversely affect a significant number of small entities.

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because USDA was not required to publish notice of proposed rulemaking under 5 U.S.C. 553 or any other law. Accordingly, a regulatory flexibility analysis is not required.

### **Paperwork Reduction Act**

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

### **List of Subjects in 7 CFR Part 800**

Administrative practice and procedure, Exports, Grains, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, USDA amends 7 CFR part 800 as follows:

### **PART 800—GENERAL REGULATIONS**

1. The authority citation for part 800 continues to read as follows:

Authority: 7 U.S.C. 71–87k.

2. Section 800.71(a)(1) is amended by revising Tables 1, 2, and 3 of Schedule A to read as follows:

**§ 800.71 Fees assessed by the Service.**

(a) \* \* \*

(1) \* \* \*

**Table 1 of Schedule A—Fees for Official Services Performed at an Applicant's Facility in an Onsite FGIS Laboratory<sup>1</sup>**

	<b>Monday to Friday (6 a.m. to 6 p.m.)</b>	<b>Monday to Friday (6 p.m. to 6 a.m.)</b>	<b>Saturday, Sunday, and overtime<sup>2</sup></b>	<b>Holidays</b>
<b>(i) Inspection and Weighing Services</b>				
<b>Hourly Rates (per service representative):</b>				
1-year contract (\$ per hour)	\$36.30	\$38.00	\$43.50	\$64.40
Noncontract (\$ per hour)	64.40	64.40	64.40	64.40
<b>(ii) Additional Tests (cost per test, assessed in addition to the hourly rate):<sup>3</sup></b>				
(A) Aflatoxin (rapid test kit method)				10.30
(B) Aflatoxin (rapid test kit method-applicant provides kit) <sup>4</sup>				8.50
(C) All other Mycotoxins (rapid test kit method)				18.80
(D) All other Mycotoxins (rapid test kit method-applicant provides kit) <sup>4</sup>				17.00
(E) NIR or NMR Analysis (protein, oil, starch, etc.)				2.50
(F) Waxy corn (per test)				2.50
(G) Fees for other tests not listed above will be based on the lowest noncontract hourly rate				
(H) Other services				
<b>(I) Class Y Weighing (per carrier):</b>				
(i) Truck/container				0.70
(ii) Railcar				1.50
(iii) Barge				2.80
<b>(iii) Tonnage Fee (assessed in addition to all other applicable fees, only one tonnage fee will be assessed when inspection and weighing services are performed on the same carrier):</b>				
(A) All outbound carriers serviced by the specific Field Office (per-				



metric ton):	
(1) League City	\$0.119
(2) New Orleans	\$0.084
(3) Portland	\$0.138
(4) Toledo	\$0.225
(5) Delegated States <sup>5</sup>	\$0.057
(6) Designated Agencies <sup>5</sup>	\$0.057

<sup>1</sup>Fees apply to original inspection and weighing, re-inspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in §800.72(a).

<sup>2</sup>Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.

<sup>3</sup>Appeal and re-inspection services will be assessed the same fee as the original inspection service.

<sup>4</sup>Applicant must provide the test kit, instrument hardware, calibration control, and all supplies required by the test kit manufacturer.

<sup>5</sup>Tonnage fee is assessed on export grain inspected and/or weighed, excluding land carrier shipments to Canada and Mexico.

**Table 2 of Schedule A—Services Performed at Other Than an Applicant's Facility in an FGIS Laboratory<sup>1, 2</sup>**

(i) Original Inspection and Weighing (Class X) Services:	
(A) Sampling only (use hourly rates from Table 1 of this section)	
(B) Stationary lots (sampling, grade/factor, & check loading):	
(1) Truck/trailer/container (per carrier)	\$20.30
(2) Railcar (per carrier)	30.00
(3) Barge (per carrier)	188.70
(4) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.07
(C) Lots sampled online during loading (sampling charge under (1)(i) of this table, plus):	
(1) Truck/trailer container (per carrier)	12.20

(2) Railcar (per carrier)	25.40
(3) Barge (per carrier)	129.10
(4) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.07
(D) Other services:	
(1) Submitted sample (per sample—grade and factor)	12.20
(2) Warehouseman inspection (per sample)	21.30
(3) Factor only (per factor—maximum 2 factors)	6.00
(4) Check loading/condition examination (use hourly rates from Table 1 of this section, plus an administrative fee per hundredweight if not previously assessed) (CWT)	0.07
(5) Re-inspection (grade and factor only. Sampling service additional, item (1)(i) of this table)	13.20
(6) Class X Weighing (per hour per service representative)	64.40
(E) Additional tests (excludes sampling):	
(1) Aflatoxin (rapid test kit method)	30.30
(2) Aflatoxin (rapid test kit method—applicant provides kit) <sup>3</sup>	28.50
(3) All other Mycotoxins (rapid test kit method)	39.00
(4) All other Mycotoxins (rapid test kit method—applicant provides kit) <sup>3</sup>	37.10
(5) NIR or NMR Analysis (protein, oil, starch, etc.)	10.30
(6) Waxy corn (per test)	10.30
(7) Canola (per test-00 dip test)	10.30
(8) Pesticide Residue Testing: <sup>4</sup>	
(i) Routine Compounds (per sample)	217.50
(ii) Special Compounds (Subject to availability)	115.90
(9) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1 of this section	
(ii) Appeal inspection and review of weighing service <sup>5</sup>	
(A) Board Appeals and Appeals (grade and factor)	82.60
(1) Factor only (per factor—max 2 factors)	43.50
(2) Sampling service for Appeals additional (hourly rates	

from Table 1 of this section)	
(B) Additional tests (assessed in addition to all other applicable tests):	
(1) Aflatoxin (rapid test kit method)	30.30
(2) Aflatoxin (rapid test kit method—applicant provides kit) <sup>3</sup>	28.30
(3) All other Mycotoxins (rapid test kit method)	47.50
(4) All other Mycotoxins (rapid test kit method—applicant provides kit) <sup>3</sup>	45.70
(5) NIR or NMR Analysis (protein, oil, starch, etc.)	17.90
(6) Sunflower oil (per test)	17.90
(7) Mycotoxin (per test-HPLC)	141.90
(8) Pesticide Residue Testing: <sup>4</sup>	
(i) Routine Compounds (per sample)	217.50
(ii) Special Compounds (Subject to availability)	115.90
(9) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1 of this section.	
(C) Review of weighing (per hour per service representative)	83.30
(iii) Stowage examination (service-on-request): <sup>4</sup>	
(A) Ship (per stowage space) (minimum \$257.50 per ship)	51.50
(B) Subsequent ship examinations (same as original) (minimum \$154.50 per ship)	51.50
(C) Barge (per examination)	41.30
(D) All other carriers (per examination)	16.20

<sup>1</sup>Fees apply to original inspection and weighing, re-inspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in §800.72(a).

<sup>2</sup>An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in §800.72(b).

<sup>3</sup>Applicant must provide the test kit, instrument hardware, calibration control, and all supplies required by the test kit manufacturer.

<sup>4</sup>If performed outside of normal business, 1½ times the applicable unit fee will be charged.

<sup>5</sup>If, at the request of the Service, a file sample is located and forwarded by the Agency, the Agency may, upon request, be reimbursed at the rate of \$3.50 per sample by the Service.

**Table 3 of Schedule A - Miscellaneous Services<sup>1</sup>**

(i) Grain grading seminars (per hour per service representative) <sup>2</sup>	\$64.40
(ii) Certification of diverter-type mechanical samplers (per hour per service representative) <sup>2</sup>	64.40
(iii) Special weighing services (per hour per service representative): <sup>2</sup>	
(A) Scale testing and certification	83.90
(B) Scale testing and certification of railroad track scales	83.90
(C) Evaluation of weighing and material handling systems	83.90
(D) NTEP Prototype evaluation (other than Railroad Track Scales)	83.90
(E) NTEP Prototype evaluation of Railroad Track Scale	83.90
(F) Use of FGIS railroad track scale test equipment per facility for each requested service. (Track scales tested under the Association of American Railroads agreement are exempt.)	502.90
(G) Mass standards calibration and re-verification	83.90
(H) Special projects	83.90
(iv) Foreign travel (hourly fee) <sup>3</sup>	83.90
(v) Online customized data service:	
(A) One data file per week for 1 year	502.90
(B) One data file per month for 1 year	301.80
(v) Samples provided to interested parties (per sample)	3.10
(vi) Divided-lot certificates (per certificate)	2.00
(vii) Extra copies of certificates (per certificate)	2.00
(viii) Faxing (per page)	2.00
(ix) Special mailing	Actual Cost
(x) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1).	

<sup>1</sup>Any requested service that is not listed will be performed at \$64.40 per hour.

<sup>2</sup>Regular business hours—Monday through Friday—service provided at other than regular business hours will be charged at 1 1/2 times the applicable hourly rate. (See the definition of “business day” in § 800.0(b))

<sup>3</sup>Foreign travel charged hourly fee of \$83.90 plus travel, per diem, and related expenditures.

\* \* \* \* \*

Dated: February 8, 2018

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